head-note to the report of that appeal reads as follows :—

> Common intention within the meaning of section 34 implies a pre-arranged plan. To convict the accused of an offence applying section 34 it should be proved that the criminal act was done in concert pursuant to the pre-arranged plan.

And in the judgment the following observations appear :—

> To invoke the aid of section 34 successfully, it must be shown that the criminal act complained against was done by one of the accused persons in furtherance of the common intention of all: if this is shown, then liability for the crime may be imposed on any one of the persons in the same manner as if the act were done by him alone.

In this appeal there was abundant evidence to prove that the three appellants had made a pre-arranged plan and that this plan was duly carried out as pre-arranged. Apart from this, the three appellants were all present when the act was carried out, and there was evidence which the Assessors could have accepted to prove that each appellant took an active part in the murder.

For these reasons the appeal of each appellant was dismissed.

Appeal Dismissed.

PUBLIC PROSECUTOR v. MARIMUTHU S/O AMAYAPAN

[App. Crim. Juris. (Russell, J.) June 14, 1948]
[K.L. — Cr. App. No. 28 of 1948]

Minor Offences Enactment (Cap. 46) S. 35 (i), (ii), (iii), (iv) — Defence — Meaning of "Possession".

In this case an Inspector found in the house of the Respondent a number of articles which might reasonably be suspected of being stolen but at the conclusion of the case for the prosecution the Magistrate acquitted and discharged the Respondent without calling for his defence relying on **Regina v. Kwek Chang Seng**[1] which case was quoted with approval in the case of **Yee Ngok v. Public Prosecutor**[2].

Held, that Sub-sec. (iv) of S. 35 of the Minor Offences Enactment was not brought to the notice of the learned Judge in the case of **Yee Ngok v. Public Prosecutor**[2]. Sub-sec. (iv) of S. 35 definitely states that the word "possession" in sub-sec. (i), (ii) and (iii) includes "possession in a house, building, ship, vessel, boat or other place as well as possession in a public road or place".

Cases referred to :—

(1) *Regina v. Kwek Chang Seng*, 6 S.S.L.R. p. 35 (Dissented).

(2) *Yee Ngok v. Public Prosecutor*, (1947) M.L.J. p. 136 (Dissented).

MAGISTRATE'S CRIMINAL APPEAL.

F. G. Cooke, D.P.P., for Public Prosecutor.

Respondent in person.

Russell, J. : — This is an appeal by the Public Prosecutor against a decision of the Magistrate at Kuala Lumpur who acquitted and discharged one Marimuthu s/o Amayapan of an offence punishable under Section 35 (i) of the Minor Offences Enactment (Cap. 46) without calling upon him for his defence.

In the house of the Respondent an Inspector of Police found a number of articles which which might reasonably be suspected of being stolen, and at the conclusion of the case for the prosecution the Magistrate refused to call upon the Respondent for his defence on the ground that a charge under this section can only be maintained if the articles are found in the possession of an accused in a street or public place. He relied upon the case of *Regina v. Kwek Chang Seng*[1] which case was quoted with approval in the case of *Yee Ngok v. Public Prosecutor*[2].

The former case was decided before the enactment of the Minor Offences Enactment in its present form, and in my opinion can no longer be relied upon as section 35 (iv) definitely states that the word "possession" in sub-sections (i), (ii) and (iii) includes "possession in a house, building, ship, vessel, boat or other place as well as possession in a public road or place."

I must add that the learned Federal Counsel who appeared for the Appellant in this case pointed out that sub-section (iv) of Section 35 was not brought to the notice of the learned Judge in the case of *Yee Ngok v. Public Prosecutor*[2].

I accordingly set aside the order of acquittal and order a new trial before another Magistrate.

Retrial Ordered.

PUBLIC PROSECUTOR v. GINDER SINGH & CHET SINGH.

[App. Crim. Juris. (Callow, J.) June 17, 1948]
[Seremban — Crim. App. No. 8 of 1948]

Motor Vehicles Commercial Use Regulations — Motor Vehicles Commercial Use (Amendment) Regulations 1948, Reg. 7 — Question of mens rea and absolute prohibition against overloading — Responsibility of owner of motor vehicle — Criminal Procedure Code, Ss. 153, 422.

The facts of the case are that on the 6th of February 1948 a lorry driven by one Nagar Singh was found to be overloaded. The driver was proceeded against and very heavily fined. The overloading was the result of directions given by the Manager of an Estate, which in turn resulted from a lorry breakdown. The respondent had no direct connection with the overloading at